

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL MCMANN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. CV 23-10488 FMO (RAOx)

**ORDER DISMISSING ACTION WITHOUT
PREJUDICE**

Plaintiff filed his complaint on December 14, 2023. (See Dkt. 1). By Order dated March 5, 2024, plaintiff was ordered to show cause, on or before March 12, 2024, why this action should not be dismissed for plaintiff's failure to complete service of the summons and complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure. (See Dkt. 10, Court's Order of March 5, 2024). Plaintiff was admonished that "[f]ailure to file a timely response to th[e] Order to Show Cause shall result in the action . . . being dismissed for lack of prosecution and for failure to comply with the orders of the court." (Id.). As of the date of this Order, plaintiff has not responded to the Order to Show Cause nor filed proofs of service of the summons and complaint on the defendant. (See, generally, Dkt.).

Rule 4(m) of the Federal Rules of Civil Procedure provides that a court, on its own initiative, "must dismiss the action without prejudice" if service is not effected "within 90 days after the complaint is filed[.]" In addition, a district court may dismiss an action for failure to prosecute or

1 to comply with court orders. Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-
2 30, 82 S.Ct. 1386, 1388 (1962) (authority to dismiss for failure to prosecute necessary to avoid
3 undue delay in disposing of cases and congestion in court calendars); Ferdik v. Bonzelet, 963
4 F.2d 1258, 1260 (9th Cir. 1992) (district court may dismiss action for failure to comply with any
5 court order). Dismissal, however, is a severe penalty and should be imposed only after
6 consideration of the relevant factors in favor of and against this extreme remedy. Thompson v.
7 Housing Auth. of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). These factors include: (1) the
8 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
9 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
10 their merits; and (5) the availability of less drastic sanctions. Id.; Henderson v. Duncan, 779 F.2d
11 1421, 1423 (9th Cir. 1986).

12 Pursuant to Rules 4(m) and 41(b) and the Court's inherent power to achieve the orderly
13 and expeditious disposition of cases, Link, 370 U.S. at 629-30, 82 S.Ct. at 1388, and in light of
14 the factors outlined in Henderson, supra, dismissal of this action without prejudice for failure to
15 effect service within the specified time and comply with the Court's Order to Show Cause issued
16 on March 5, 2024 (Dkt. 10), is appropriate.

17 Based on the foregoing, IT IS ORDERED that judgment be entered dismissing this action,
18 without prejudice, for failure to effect service and comply with the orders of this Court.

19 Dated this 25th day of March, 2024.

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21 /s/
22 Fernando M. Olguin
23 United States District Judge
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